

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

PAUL W. HARDY

AFFIDAVIT OF MAILING
OF NOTICE OF DECISION
BY (CERTIFIED) MAIL

For a Redetermination of a Deficiency or
a Refund of Unincorporated Business:
Taxes under Article(s) 23 of the
Tax Law for the Year(s) 1960, 1961, 1962;
1963, 1964 and 1965.

State of New York
County of Albany

JANET MACK

, being duly sworn, deposes and says that

she is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 4th day of November, 1974, she served the within
Notice of Decision (or Determination) by (certified) mail upon PAUL W. HARDY

(representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows:

Mr. Paul W. Hardy
34-21 80th Street
Jackson Heights, New York 11372

and by depositing same enclosed in a postpaid properly addressed wrapper in a
(post office or official depository) under the exclusive care and custody of
the United States Post Office Department within the State of New York.

That deponent further says that the said addressee is the (representative
of) petitioner herein and that the address set forth on said wrapper is the last
known address of the (representative of the) petitioner.

Sworn to before me this

4th day of November, 1974

James S. Van Ratten

Janet Mack

STATE OF NEW YORK
STATE TAX COMMISSION

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of

PAUL W. HARDY

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a Refund of **Unincorporated Business** :
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Tax Law for the Year(s) 1960, 1961, 1962;
1963, 1964 and 1965.

State of New York
County of Albany

JANET MACK, being duly sworn, deposes and says that
she is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 4th day of November, 1974, she served the within
Notice of Decision (or Determination) by (certified) mail upon PAUL K. MCGETTIGAN

(representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Mr. Paul K. McGettigan

34-31 81st Street
Jackson Heights, New York 11372

and by depositing same enclosed in a postpaid properly addressed wrapper in a
(post office or official depository) under the exclusive care and custody of
the United States Post Office Department within the State of New York.

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Janet Mack



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION
HEARING UNIT

EDWARD ROOK
SECRETARY TO
COMMISSION

STATE TAX COMMISSION

MARIO A. PROCACCINO, PRESIDENT
A. BRUCE MANLEY
MILTON KOERNER

BUILDING 9, ROOM 214-A
STATE CAMPUS
ALBANY, N.Y. 12227

AREA CODE 518

ADDRESS YOUR REPLY TO

MR. WRIGHT 457-2655
MR. LEISNER 457-2657
MR. COBURN 457-2896

DATED: Albany, New York
November 4, 1974

Mr. Paul W. Hardy
34-21 80th Street
Jackson Heights, New York 11372

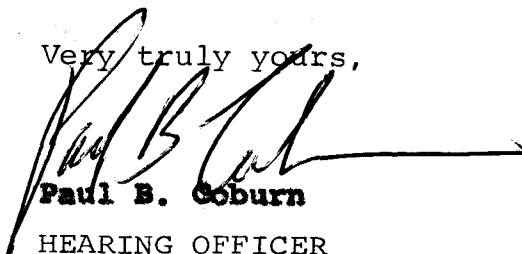
Dear Mr. Hardy:

Please take notice of the **DECISION**
of the State Tax Commission enclosed herewith.

Please take further notice that pursuant to
Section(s) **722** of the Tax Law, any
proceeding in court to review an adverse deci-
sion must be commenced within **4 months**
from the date of this notice.

Any inquiries concerning the computation of tax
due or refund allowed in accordance with this
decision or concerning any other matter relative
hereto may be addressed to the undersigned.
These will be referred to the proper party for
reply.

Very truly yours,


Paul B. Coburn
HEARING OFFICER

Enc.

cc: Petitioner's Representative
Law Bureau

AD-1.12 (8/73)

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
PAUL W. HARDY	:	
	:	DECISION
for Redetermination of Deficiency or	:	
for Refund of Unincorporated Business	:	
Tax under Article 23 of the Tax Law	:	
for the Years 1960, 1961, 1962, 1963,	:	
1964 and 1965.	:	

Petitioner, Paul W. Hardy, has filed petitions for redetermination of deficiency or for refund of unincorporated business tax under Article 23 of the Tax Law for the years 1960, 1961, 1962, 1963, 1964 and 1965. (File Nos. 3-7393866 and 32587191.) A formal hearing was held before Paul B. Coburn, Hearing Officer, at the offices of the State Tax Commission, 2 World Trade Center, New York, New York, on March 22, 1974, at 9:00 A.M. Petitioner appeared by Paul K. McGettigan. The Income Tax Bureau appeared by Saul Heckelman, Esq., (Francis X. Boylan, Esq., of counsel).

ISSUES

I. Did petitioner, Paul W. Hardy's activities, as a printing services salesman during the years 1960 through 1965, constitute the carrying on of an unincorporated business?

II. Did petitioner, Paul W. Hardy, receive proper credit for business expenses incurred during the years 1964 and 1965?

FINDINGS OF FACT

1. Petitioner, Paul W. Hardy, and his wife filed New York State combined resident income tax returns for the years 1960,

1961, 1962, 1963 and 1964. He did not file New York State unincorporated business tax returns for said years. He filed a New York State income tax resident return and a New York unincorporated business tax return for the year 1965.

2. On February 10, 1969, the Income Tax Bureau issued a Statement of Audit Changes against petitioner, Paul W. Hardy, imposing unincorporated business tax in the total sum of \$1,774.60 upon the income received by him from his activities as a salesman during the years 1960, 1961, 1962 and 1963. In accordance with the aforesaid Statement of Audit Changes, it issued a Notice of Deficiency against him in the sum of \$2,433.17.

3. On February 10, 1969, the Income Tax Bureau issued a Statement of Audit Changes against petitioner, Paul W. Hardy, imposing unincorporated business tax for the year 1964 in the sum of \$1,003.62 and for the year 1965 in the sum of \$526.73 upon the income received by him from his activities as a salesman during said years. In accordance with the aforesaid Statement of Audit Changes, it issued a Notice of Deficiency against him in the sum of \$1,849.61.

4. During the years 1960 through 1965 petitioner, Paul W. Hardy, was a sales representative for the General Printing Company of Fort Wayne, Indiana, conducting his sales activities in the northeast region of the United States. He had worked for the company since the 1920's selling its products on a commission basis and had been a vice-president of the company without salary for many years. The company was engaged in

printing advertising placards and displays specializing in servicing paint companies and distributors. Whenever the company received an inquiry from a firm in his area, it requested him to follow through and furnish a weekly report of his progress. He maintained an office at 271 Madison Avenue in New York City until May 31, 1965, and the General Printing Company was listed in the New York City telephone directory at that address with the telephone number of his office. The company paid him the sum of \$2,500.00 a year toward the expenses of maintaining said office. On May 31, 1965, the company entered into a lease for said office and assumed its entire cost.

5. During the years 1960 through 1965 in addition to his representation of General Printing Company, petitioner, Paul W. Hardy, also sold various items for other companies in the line of display and printed material which General Printing Company did not itself manufacture, which business was carried on under the name of Paul W. Hardy Company, and the income from such business was admittedly subject to the unincorporated business tax.

6. During the years 1960 through 1965 General Printing Company withheld Federal income tax and social security tax from the commissions paid to petitioner, Paul W. Hardy. It did not withhold New York State income tax. It included him and his wife in its hospitalization plan, contributing 75% of the premiums in each year. It included him in its group life insurance plan, the premiums for which it paid in full. It supplied him with letterheads and other stationery. With the exception of the aforesaid \$2,500.00 payment towards rent and

stationery and supplies, he was not reimbursed for his expenses incurred in connection with his business activities. General Printing Company did not exercise any substantial control or supervision over his sales activities or techniques or over the time he devoted to sales, except to limit the territory in which he could sell.

7. Petitioner, Paul W. Hardy, employed an assistant to aid him in making sales during the years 1960 through 1965. The assistant received \$13,561.95 in 1960, \$13,448.71 in 1961, \$3,619.21 in 1962, \$483.16 in 1963, \$748.00 in 1964 and \$185.40 in 1965.

8. Petitioner, Paul W. Hardy, incurred business expenses in connection with his sales activities of \$8,505.44 in 1964 and \$15,005.09 in 1965. The Income Tax Bureau in computing unincorporated business tax due for the year 1965 gave him credit for business expenses incurred in said year. However, in computing unincorporated business tax due for the year 1964 it did not give him credit for \$7,565.07 in expenses attributable to his activities on behalf of General Printing Company. His net income from business after credit for said sum was \$27,525.33.

CONCLUSIONS OF LAW

A. That the income received by petitioner, Paul W. Hardy, from General Printing Company and the other firms that he represented during the years 1960 through 1965 constituted income from his regular business of selling printing services and not compensation as an employee exempt from the imposition of the

unincorporated business tax in accordance with the meaning and intent of section 703(b) of the Tax Law.

B. That the aforesaid activities of petitioner, Paul W. Hardy, during the years 1960 through 1965 constituted the carrying on of an unincorporated business and his income derived therefrom was subject to the unincorporated business tax in accordance with the meaning and intent of section 703 of the Tax Law.

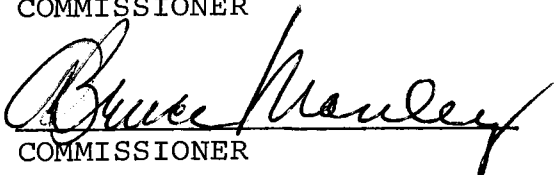
C. That petitioner, Paul W. Hardy's net income from his business activities as computed in accordance with the meaning and intent of section 706 of the Tax Law was \$27,525.33 in the year 1964 and \$22,710.26 in the year 1965.

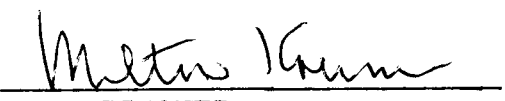
D. That the petitions of Paul W. Hardy are granted to the extent of reducing net income from business for the year 1964 from \$35,090.40 to \$27,525.33 and of reducing unincorporated business tax due for the year 1964 from \$1,003.62 to \$701.01 together with such interest as may be lawfully due; that the Income Tax Bureau is hereby directed to accordingly modify the Notice of Deficiency issued for said year, and, that except as so granted, the petitions are in all other respects denied.

DATED: Albany, New York
November 4, 1974

STATE TAX COMMISSION


COMMISSIONER


COMMISSIONER


COMMISSIONER